

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.173 OF 2007

The Mahanagar Co-operative Bank Ltd. ..Petitioner

V/s.

Co-operative Bank Employees Union ..Respondents
and others

Mr.A.D.Shetty with Ms.Rita Joshi for the petitioner
Mr.A.S.Peerjade for the respondent No.1 and 2

CORAM : V.C.DAGA, J.

DATE : 26TH FEBRUARY, 2007

ORAL JUDGMENT

1. Rule returnable forthwith.
2. Mr.A.S.Peerjade waives service on behalf of respondent Nos.1 and 2.
3. The petitioner, by the present petition is seeking to challenge the legality and validity of the order dated 4th December, 2006 passed by the learned member, Industrial Court, Bandra(East),

Mumbai confirming the order passed by the 11th Industrial Court, Mumbai holding that the enquiry conducted by the petitioner employer was not fair and proper and directing the petitioner to start de novo enquiry and pay statutory allowances to the respondent No.2, employee in question.

4. The brief facts leading to the present petition are that the respondent No.2 joined the petitioner Bank in the year 1984 as a peon and was, subsequently, promoted as a clerk. The petitioner Bank finding prima facie; case for enquiry against the respondent No.2 initiated departmental enquiry into the charges leading to the misappropriation of funds of the petitioner Bank.

5. It appears that the respondent No.2 came to be suspended by an order dated 15th October, 2004. A detailed chargesheet dated 20th November, 2004 was, thereafter, issued to the respondent No.2 by the petitioner Bank and enquiry officer was appointed to enquire into the charges of levelled against him. The petitioner-Bank after receipt of

the report of the enquiry officer issued Show Cause Notice to the respondent No.2 to seek his explanation. In order to challenge this Show Cause Notice dated 19th February, 2005, respondent No.2 invoked the jurisdiction of the Labour Court under Section 28 R/w. item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP for short) on the apprehension that his services may be terminated resorting to the unfair labour practice by the petitioner Bank.

6. The Relevant prayer clauses claiming substantive reliefs in the complaint are reproduced here in below :-

- (a) That this Hon'ble Court be pleased to enquire, hold and declare that the Respondents have engaged in and are continuing to engage in unfair labour practices under Item 1(a), (b), (d), (f) & (g) of Schedule IV of the MRTU Act.
- (b) That this Hon'ble Court be pleased to direct the Respondents to cease and desist from engaging in the aforesaid Unfair Labour Practices forthwith;
- (c) That this Hon'ble Court may be

pleased to quash and set aside the Order of Termination if it is issued against the Complainant No.2 forthwith by granting consequential relief.

- (d) That this Hon'ble Court may be pleased to hold and declare that the Enquiry conducted against the Complainant No.2 is not fair and proper and the reports submitted by the Enquiry Officer is perverse.
- (h) Award cost of this Complaint.
- (i) Any other and further reliefs as the Hon'ble Court may deem fit and proper in the facts and circumstances may please be granted.

The aforesaid complaint came to be registered (ULP) 81 of 2005. In the said complaint, the respondent No.2 moved an application for interim relief under Section 30(2) of the MRTU & PULP Act.

7. The respondent No.3 Labour Court after hearing the complainant was pleased to grant ex-parte interim order dated 12th April, 2005. The same was modified by subsequent order dated 1st March, 2005 and the petitioner was directed to allow the respondent No.2 to report for duty and pay him his wages.

8. Being aggrieved by the aforesaid order dated 12th April, 2005, the petitioner invoked revisional jurisdiction of the Industrial Court in Revision Application (ULP) No.87 of 2005. The Industrial Court after hearing both the parties was pleased to allow revision applications and set aside the order passed by the Labour Court, respondent No.3 dated 1st March, 2005. The aforesaid order was affirmed by this Court in Writ Petition No.8883 of 2005 vide order dated 23rd March, 2006 whereby the proceedings were remanded back to the Labour Court for disposal within three months from the date of the receipt of the order.

9. The learned Labour Court after allowing parties to lead the evidence and hearing them, was pleased to pass an order holding that the enquiry conducted by the employer into the charges levelled against the respondent No.2 was not fair and proper, consequently, at the interim stage, itself, the termination order was set aside and the petitioner Bank was directed to conduct a de novo enquiry with further direction to complete the same

within four months and to pay subsistence allowance to the respondent No.2.

10. The petitioner Bank not satisfied with the aforesaid order dated 9th August, 2006 again approached the Industrial Court by way of revision under Section 44 of the said Act by way of Revision Application (ULP) No.208 of 2006, which came to be dismissed by an order dated 4th December, 2006. By the said order, the Industrial Court, affirmed the order of the Labour Court.

11. Being aggrieved by the above order, the petitioner Bank has invoked the writ jurisdiction of this Court under article 226 of the Constitution of India.

12. [Mr.A.D.Shetty](#), the learned counsel appearing for the petitioner raised and urged various contentions in the petition to challenge the impugned order, contending that the Labour Court erroneously held that the enquiry was not fair and proper. He submits that the Labour Court could not

have set aside the order of termination at interim stage.

13. The learned counsel further urged that it was not open for the Labour Court to direct the reopening of the enquiry with further direction to conduct de novo enquiry, especially, when the petitioner Bank as a employer was entitled to lead evidence to prove misconduct before Labour Court. In support of his submission, he relied upon various judgments of the Apex Court, holding that an employer has a right to lead evidence to prove misconduct committed by the workman.

14. Per contra, learned counsel appearing for the respondent No.2 tried to support impugned order contending that the Labour Court was perfectly justified in holding that the enquiry was not fair and proper for the reasons recorded in the order, were affirmed by the Industrial Court in the revision.

15. Having heard the rival parties, in my view,

the impugned order is liable to be quashed for more than one reason. Firstly, persual of the complaint and prayer clauses incorporated therein, would go to show that there is no challenge to the order of termination dated 28th February, 2005.

16. The complainant-respondent No.2 in prayer clause (c) has prayed that the order of termination be quashed and set aside, if it is issued against the respondent No.2. It is, therefore, clear that on the basis of apprehension of termination, the complainant has filed subject complaint. After service of the order of termination, there is neither any amendment to the complaint to bring subsequent event on record nor fresh complaint is filed by the complainant on fresh cause of action to challenge the order of termination. It is, therefore, clear that the order of termination dated 28th February, 2005 is not a subject matter of challenge in the complaint. In the absence of substantive challenge to the order of termination dated 28th February, 2005, it was not open for the Labour Court to grant interim relief because

interim relief is always in the aid of final relief. If no final relief is claimed, no interim relief can be asked for.

17. In the above view of the matter, for want of specific challenge to the order of termination, it was not open for the Labour Court to dwell upon the validity of the termination order and to set aside the same; that too, at the stage of grant of interim relief.

18. In the entire complaint, there is no reference to the termination order having been issued by the employer. Substantive complaint is based on the apprehension that complainant's services may be terminated.

19. [Mr.A.D.Shetty](#) is right in his submission that if at all the enquiry was found to be defective, it was not open for the Labour Court to set aside the order of termination and direct de novo enquiry against the respondent No.2 since the petitioner Bank, as an employer, has a right to

lead the evidence before Labour Court to prove misconduct committed by respondent No.2. The right of the employer to lead evidence is well recognized to avoid delay and multiplicity of the proceedings with a view to resolve dispute between management and workman. Readily available Judgment is in the case of **Workmen of the Motipur Sugar Factory Private Ltd. v. The Motipur Sugar Factory Private Ltd., AIR 1965 Supreme Court 1803**, wherein the Apex Court observed thus :

“If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits, the employee has the advantage of having the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or

improper, the tribunal may give an opportunity to the employer to prove his case and in doing so, the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes. Therefore, we are satisfied that no distinction can be made between cases where the enquiry has in fact been held. We must therefore, reject the contention that as there was no enquiry in this case it was not open to the respondent to justify the discharge before the tribunal Re.(iii)."

Keeping in view aforesaid law laid down by the Apex Court and re-iterated from time to time in number of decisions, it was obligatory on the part of the Labour Court to grant an opportunity to the petitioner Bank to lead evidence and to prove misconduct against the respondent No.2.

20. Mr.A.D.Shetty made elaborate submissions with respect to the legality of the enquiry and fairness thereof which, in my opinion, need not be examined at this stage of litigation, especially, when the impugned order is being set aside and proceedings are being remitted back to the Labour Court for consideration a fresh.

21. The impugned orders suffer from non-application of mind and are contrary to the established principles recognised in the Labour Jurisprudence, as such they are liable to be quashed and set aside.

22. In the result, both the impugned orders are passed by the Labour Court and the Industrial Court are set aside and proceedings are remanded back to the Labour Court for consideration afresh with a direction to examine the maintainability of the complaint in absence of specific challenge to the order of termination. The Labour Court would be free to consider prayer for amendment of complaint, if made, on its own merits. All rival contentions are kept open.

23. The Labour Court is further directed to decide interim application afresh within a period of three months from the date of the receipt of the copy of this order. It is further made clear that in the event, Labour Court comes to the conclusion

that the enquiry conducted by the petitioner Bank is not fair and proper, the Labour Court is expected to grant an opportunity to the petitioner Bank to lead evidence before it to prove misconduct alleged to have been committed by the respondent No.2. It is further needless to mention that while passing an interim order it would be open for the Labour Court to adjust equities between the parties on its own merits. The petition is accordingly allowed. Rule is made absolute in terms of this order with no order as to costs.

(V.C.DAGA, J.)

